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10/615,198	07/08/2003	Lacey Lanier Tarver	GEI-09	8023

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EXAMINER
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PEARSE, ADEPEJU OMOLOLA

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 03/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/615,198

Applicant(s)

TARVER, LACEY LANIER

Examiner

Adepeju Pearse

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### *Claim Objections*

1. Claim 1 is objected to because of the following informalities: last line "form" should be corrected to --from--. Appropriate correction is required.
2. Claim 15 is objected to because of the following informalities: the claim recites a method of cooking ham without listing any essential steps towards the cooking process. In line 8, the word "in" between "with" and "the" should be removed. Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) The invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 3-4, 8 are rejected under 35 U.S.C. 102(e) as being anticipated by applicants own admission of prior art (Fig.1). With regard to claim 1, applicant discloses in figure 1, a precooked spiral sliced ham product packaged in a shrink-wrap for sale to which various labels and cooking instruction have been applied. It is inherent that the ham is seasoned because it is precooked for consumers.

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5. With regard to claims 3-4, it is inherent that the prior art as disclosed in figure 1 of the instant application is capable of withstanding high cooking temperatures as instantly claimed because applicant has not recited the specific material used to make the shrinkable bag.

6. With regard to claim 8, applicant discloses in figure 1, a precooked spiral sliced ham product packaged in a shrink-wrap for sale to which various labels and cooking instruction have been applied. It is inherent that the ham is seasoned because it is precooked for consumers and the bag is capable of withstanding high cooking temperatures as instantly claimed because applicant has not recited the specific material used to make the shrinkable bag.

### *Claim Rejections - 35 USC § 103*

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zaeske et al (U.S. Pat. No. 5,335,480) in view of McKee (U.S. Pat. No. 2,140,162), Gore et al (U.S. Pat. No.

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6,513,450), Webb (U.S. Pat. No. 4,753,809), Schafer (US 2002/0081355) and Logan, JR (US 2003/0077376). With regard to claim 1, Zaeske et al disclose a meat packaged in a heat-sealable cook-in-bag (col 2 lines 44-45). The meat could be ham (col 6 line 68), is seasoned (col 4 lines 42-44) and can be cooked in an oven (col 7 lines 25-26). Zaeske et al also disclose that preprinted bags with superior graphics may be utilized (col 8 lines 66-68). However, Zaeske et al failed to disclose a spiral sliced ham and display wrappers with informational attachments for presenting ham at meat counters. Logan teaches boneless meat products that are spirally sliced including ham (abstract) and that spiral sliced meats have become popular ([00050]). McKee teaches sliced ham pieces wrapped in waxed paper with an attractive label band thereon and arranged attractively in a display carton in order to present an attractive appearance and enhance marketability of the meat (page 2 lines 15-19, see fig. 7 and 8). It would have been obvious to one of ordinary skill in the art to modify Zaeske et al with Logan and McKee by spiral cutting the ham because it is a well-known trend in the art and utilizing attractive display wrappers in order to enhance marketability of the meat product at retail stores.

10. With regard to claims 2 and 9, Zaeske et al disclose that a non-adherent heat shrinkable bag is preferred because the presence of seasonings interferes with film/meat surface interaction (col 5 lines 24-30).

11. With regard to claims 3 and 4, Zaeske et al disclose that the bag can be placed in an oven and cooked in a cooking medium for example 165°F until the meat reaches an internal temperature of 150°F (col 7 lines 25-27). However, Zaeske et al failed to disclose temperatures in excess of about 200°F or 225°F. It would be obvious to one of ordinary skill in the art to expect that the bag would be able to withstand this higher temperatures because the bag taught

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by Zaeske et al recites the limitations instantly claimed and the meat product is cooked in the same cooking vessel i.e. an oven which is capable of heating up to 400°F therefore it would be expected that the bag can withstand these higher temperatures.

12. With regard to claim 5, Zaeske et al failed to disclose glaze as a seasoning. However, Gore et al teach a method for seasoning ham with spices and other seasonings to form a glaze (abstract). It would be obvious to one of ordinary skill in the art to modify Zaeske et al with Gore et al by coating ham with glaze as a seasoning to improve the flavor.

13. With regard to claims 6 and 7, Zaeske et al disclose a meat packaged in a heat-sealable cook-in-bag (col 2 lines 44-45). The meat could be ham (col 6 line 68), is seasoned (col 4 lines 42-44) and can be cooked in an oven (col 7 lines 25-26). However, Zaeske et al failed to disclose a spiral sliced ham. Logan teaches boneless meat products that are spirally sliced including ham (abstract) and that spiral sliced meats have become popular ([00050]). It would have been obvious to one of ordinary skill in the art to modify Zaeske et al with Logan by spiral cutting the ham because it is a well-known trend in the art.

14. With regard to claim 8, Zaeske et al disclose a meat packaged in a heat-sealable cook-in-bag (col 2 lines 44-45). The meat could be ham (col 6 line 68), is seasoned (col 4 lines 42-44) and can be cooked in an oven (col 7 lines 25-26). In addition Zaeske et al disclose that the bag can be placed in an oven and cooked in a cooking medium for example 165°F until the meat reaches an internal temperature of 150°F (col 7 lines 25-27). However, Zaeske et al failed to disclose temperatures in excess of about 200°F and spiral slicing ham. Logan teaches boneless meat products that are spirally sliced including ham (abstract) and that spiral sliced meats have become popular ([00050]). It would have been obvious to one of ordinary skill in the art to

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modify Zaeske et al with Logan by spiral cutting the ham because it is a well-known trend in the art. In addition it would be obvious to one of ordinary skill in the art to expect that the bag would be able to withstand this higher temperatures because the bag taught by Zaeske et al recites the limitations instantly claimed and the meat product is cooked in the same cooking vessel i.e. an oven which is capable of heating up to 400°F therefore it would be expected that the bag can withstand these higher temperatures.

15. With regard to claims 10 and 12, Zaeske et al disclose a meat packaged in a heat-sealable cook-in-bag (col 2 lines 44-45). The meat could be ham (col 6 line 68), is seasoned (col 4 lines 42-44), vacuum packed (col 7 lines 9-11) and can be cooked in an oven (col 7 lines 25-26).

Zaeske et al also disclose that preprinted bags with superior graphics may be utilized (col 8 lines 66-68). However, Zaeske et al failed to disclose a spiral sliced ham and display wrappers with informational attachments for presenting ham at meat counters. Logan teaches boneless meat products that are spirally sliced including ham (abstract) and that spiral sliced meats have become popular ([0050]). McKee teaches sliced ham pieces wrapped in waxed paper with an attractive label band thereon and arranged attractively in a display carton in order to present an attractive appearance and enhance marketability of the meat (page 2 lines 15-19, see fig. 7 and 8). It would have been obvious to one of ordinary skill in the art to modify Zaeske et al with Logan and McKee by slicing the ham because it is a well-known trend in the art and utilizing attractive display wrappers in order to enhance marketability of the meat product at retail stores.

16. With regard to claim 11, Zaeske et al disclose a meat packaged in a heat-sealable cook-in-bag (col 2 lines 44-45). However, Zaeske et al failed to disclose curing or smoking the ham. Webb teaches curing ham with a flavoring material such as salt (col 4 lines 15-19) and smoking

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the ham (col 4 lines 66-68) to inhibit microbial growth (col 5 lines 23-24). Gore et al teach a method for seasoning ham with spices and other seasonings to form a glaze (abstract). It would have been obvious to one of ordinary skill in the art to modify Zaeske et al with Webb and Gore in order to inhibit microbial growth by smoking and applying a glaze to improve flavor.

17. With regard to claim 13, Zaeske et al disclose a meat packaged in a heat-sealable cook-in-bag (col 2 lines 44-45). The meat could be ham (col 6 line 68) and is seasoned (col 4 lines 42-44). However, Zaeske et al failed to disclose a spiral sliced ham or applying a glaze mix. Logan teaches boneless meat products that are spirally sliced including ham (abstract) and that spiral sliced meats have become popular ([0050]). Gore et al teach a method for seasoning ham with spices and other seasonings to form a glaze (abstract). It would have been obvious to one of ordinary skill in the art to modify Zaeske et al with Logan and Gore et al by spiral slicing the ham because it is a well-known trend in the art and applying a glaze to improve the flavor of the ham.

18. With regard to claim 14, Zaeske et al failed to disclose applying foil or net as packaging materials. However, Schafer teaches a packaging wrap that is suitable for a cooking process provided for meat products in particular ham comprising a foil that is permeable to gas; steam and/or smoke and a net could also be utilized to increase strength (abstract). It would have been obvious to one of ordinary skill in the art to modify Zaeske et al with Schafer in order to provide a suitable packaging material with increased strength.

19. With regard to claim 15, Zaeske et al disclose a meat packaged in a heat-sealable cook-in-bag (col 2 lines 44-45). The meat could be ham (col 6 line 68), is seasoned (col 4 lines 42-44) and can be cooked in an oven (col 7 lines 25-26). In addition, Zaeske et al disclose that a non-



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adherent heat shrinkable bag is preferred because the presence of seasonings interferes with film/meat surface interaction (col 5 lines 24-30). However, Zaeske et al failed to disclose applying decorative foil. Schafer teaches a packaging wrap that is suitable for a cooking process provided for meat products in particular ham comprising a foil that is permeable to gas; steam and/or smoke (abstract), the foil is removed from the meat product so that the consumer can receive a product which is free from packaging foil and has a perfect appearance ([0009]). It would be obvious to one of ordinary skill in the art to modify Zaeske et al with Schafer by utilizing a foil for decorative purposes so that the consumer can receive a product with perfect appearance.

20. With regard to claim 16, Zaeske et al disclose that the bag can be placed in an oven and cooked in a cooking medium for example 165°F until the meat reaches an internal temperature of 150°F (col 7 lines 25-27). However, Zaeske et al failed to disclose temperatures in excess of about 225°F or the time span. It would be obvious to one of ordinary skill in the art to expect that the bag would be able to withstand this higher temperatures because the bag taught by Zaeske et al recites the limitations instantly claimed and the meat product is cooked in the same cooking vessel i.e. an oven which is capable of heating up to 400°F therefore it would be expected that the bag can withstand these higher temperatures. In addition it would be obvious to expect that the cooking time would be based on the size of the product and a much bigger product would require a longer time in order to be well cooked compared to a smaller product.

21. With regard to claim 17, Zaeske et al failed to disclose removing the ham from the cook-in bag and placing on a platter. However, it would be obvious to one of ordinary skill in the art to

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expect that the consumer would remove the ham from the cook-in bag and place on a platter for serving in order to have access and ease of serving of the ham.

22. Claims 2, 5, 6-7, 9-10 and 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicants own prior art admission in view of Zaeske et al (U.S. Pat. No. 5,335,480), Gore et al (U.S. Pat. No. 6,513,450) and Schafer (US 2002/0081355). With regard to claims 2 and 9, the prior art as disclosed by applicant does not show a non-adhesion shrinkable material. However, Zaeske et al disclose that a non-adherent heat shrinkable bag is preferred because the presence of seasonings interferes with film/meat surface interaction (col 5 lines 24-30). It would have been obvious to one of ordinary skill in the art to modify the prior art to utilize non-adhesion shrinkable material in order to prevent interference between seasonings and the film/meat surface interaction.

23. With regard to claim 5, the prior art as disclosed by applicant does not show glaze as seasoning. However, Gore et al teach a method for seasoning ham with spices and other seasonings to form a glaze (abstract). It would be obvious to one of ordinary skill in the art to modify the prior art with Gore et al by coating ham with glaze as a seasoning to improve the flavor.

24. With regard to claim 6, applicant discloses in figure 1, a precooked spiral sliced ham product packaged in a shrink-wrap for sale to which various labels and cooking instruction have been applied. However, the prior art does not seasonings including a glaze. Gore et al teach a method for seasoning ham with spices and other seasonings to form a glaze (abstract). It would

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be obvious to one of ordinary skill in the art to modify the prior art with Gore et al by coating ham with glaze as a seasoning to improve the flavor. It would be expected that consumers may place the shrink-wrap sliced ham in an oven for further cooking if they desire because applicant has not recited a specific oven-browning bag.

25. With regard to claim 7, the prior art discloses a spiral sliced ham (see fig 1).

26. With regard to claims 10 and 12, the prior art discloses a precooked spiral sliced ham product packaged in a shrink-wrap for sale to which various labels and cooking instruction have been applied. It would be expected that the ham be seasoned because it is precooked for consumers and that the labels would be removed prior to further cooking. However, the prior art does not show a vacuum packed browning bag. Zaeske et al teach a meat packaged in a heat-sealable cook-in-bag (col 2 lines 44-45). The meat could be ham (col 6 line 68), is seasoned (col 4 lines 42-44); vacuum packed to withdraw air from the bag (col 7 lines 9-11) and can be cooked in an oven (col 7 lines 25-26). It would have been obvious to one of ordinary skill in the art to modify the prior art with Zaeske et al by vacuum packing the bag in order to withdraw air and thereby prevent deterioration of quality of the product.

27. With regard to claim 13, the prior art discloses a pre-cooked spiral sliced ham that is shrink-wrapped, but failed to show a glaze mix as seasoning. Gore et al teach a method for seasoning ham with spices and other seasonings to form a glaze (abstract). It would be obvious to one of ordinary skill in the art to modify the prior art with Gore et al by coating ham with glaze as a seasoning to improve the flavor.

28. With regard to claim 14, the prior art does not disclose applying foil or net as packaging materials. However, Schafer teaches a packaging wrap that is suitable for a cooking process

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provided for meat products in particular ham comprising a foil that is permeable to gas; steam and/or smoke and a net could also be utilized to increase strength (abstract). It would have been obvious to one of ordinary skill in the art to modify the prior art with Schafer in order to provide a suitable packaging material with increased strength.

29. With regard to claim 15, the prior art discloses a precooked spiral sliced ham product packaged in a shrink-wrap for sale to which various labels and cooking instruction have been applied. It is inherent that the ham is seasoned because it is precooked for consumers. However, the prior art does not show applying or removing decorative foil. Zaeske et al disclose that a non-adherent heat shrinkable bag is preferred because the presence of seasonings interferes with film/meat surface interaction (col 5 lines 24-30). Schafer teaches a packaging wrap that is suitable for a cooking process provided for meat products in particular ham comprising a foil that is permeable to gas; steam and/or smoke (abstract), the foil is removed from the meat product so that the consumer can receive a product which is free from packaging foil and has a perfect appearance ([0009]). It would be obvious to one of ordinary skill in the art to modify the prior art with Zaeske et al with Schafer by utilizing a foil for decorative purposes so that the consumer can receive a product with perfect appearance.

### *Conclusion*

30. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Prior art discloses applicable subject matter.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adepeju Pearse whose telephone number is 571-272-8560. The examiner can normally be reached on Monday through Friday, 8.00am - 4.30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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